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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 SYLVESTER JAMES MAHONE,

9 Plaintiff,

10 v.

11 JAMES MATELJACK, et al.,

12 Defendants.

CASE NO. C11-5682BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 10), and
15 Plaintiff Sylvester James Mahone’s (“Mahone”) objections to the R&R (Dkt. 11).

16 On November 7, 2011, Judge Creatura issued the R&R recommending that
17 Mahone’s complaint be dismissed for failure to state a claim upon which relief can be
18 granted. Dkt. 10. Judge Creatura found that Mahone’s claims were based on facts that
19 implicate a criminal conviction for which he is currently serving a twenty-four-month
20 sentence. *Id.* Accordingly, Judge Creatura recommended that Mahone’s claims be
21 dismissed because Mahone is challenging facts that support the criminal conviction, and
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1 therefore, must challenge such facts in a petition for a writ of habeas corpus. *Id.* at 3
2 (citing *Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir. 1997)).

3 On November 17, 2011, Mahone filed objections to the R&R arguing that he has a
4 proper “prisoner retaliation claim” brought under the First Amendment to the United
5 States Constitution and that “he is not and his complaint does not challenge or collaterally
6 attack his criminal conviction.” Dkt. 11 at 2.

7 Mahone was convicted of felony harassment for activities that occurred at the
8 Pierce County Jail and is now serving a twenty-four-month sentence for that conviction.
9 See Dkt. 8. Mahone insists that, in bringing his retaliation claim, he is not attempting to
10 challenge the underlying facts of his conviction. Dkt. 11. However, Mahone’s amended
11 complaint specifically alleges that Defendants’ retaliation included “filing criminal
12 charges against Plaintiff with the State.” Dkt. 8 at 3. Accordingly, the Court concludes
13 that Mahone’s claims would necessarily imply the invalidity of his conviction, and his
14 challenge must be brought as a petition for a writ of habeas corpus.

15 The Court having considered the R&R, Mahone’s objections, and the remaining
16 record, does hereby find and order as follows:

17 (1) The R&R is **ADOPTED**; and

18 (2) This action is **DISMISSED**.

19 Dated this 3rd day of January, 2012.

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22 BENJAMIN H. SETTLE
United States District Judge